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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. .....

ATLANTIC COAST LINE RAILROAD COMPANY,

Petitioner,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. W. RUTLAND, individually and as a member of said Brotherhood,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Atlantic Coast Line Railroad Company[1] ("ACL"), prays that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above cause on July 17, 1969.

[1] This suit was instituted prior to the merger of Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company, and has continued to be prosecuted and defended in the name of Atlantic Coast Line Railroad Company, to which we will

OPINIONS BELOW

The order of the Court of Appeals dated July 17, 1969 (Appendix H, pp. 25a-26a, *infra*)[2] is unreported. The District Court's order dated June 19, 1969, (Appendix D, pp. 16a-18a, *infra*) embodies a discussion of the facts and the court's conclusions of law; it has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on July 17, 1969 (Appendix H, pp. 25a-26a, *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether it was permissible for the District Court here to enjoin proceedings in a state court, notwithstanding the anti-injunction provisions of Section 2283 of the

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continue generally to make reference. Because of this, some references to the premerger situation will be made in the present tense. Seaboard Coast Line Railroad Company, the successor by merger to Atlantic Coast Line Railroad Company and the present sole owner of Moncrief Yard, will sometimes be referred to herein as "SCL".

[2] The record will be referenced as (Record —) except for those portions reproduced in the Appendix to this petition for certiorari, which will be referenced by the letter designation of the document or the page number of the Appendix as (Appendix —). The transcript of the hearing on application for temporary restraining order before the Honorable William A. McRae, Jr., in the District Court for the Middle District of Florida on April 25, 1967, will be referenced as (McRae Tr. —). The transcript of the testimony in the proceedings before the Honorable Charles A. Luckie in the Florida Circuit Court, Duval County, on May 1, 1967, will be referenced as (Luckie Tr. —). Transcripts of other proceedings or hearings will be specifically described.

Judicial Code, either (a) on the theory that by enjoining the pursuit of state court remedies, the District Court was "protecting or effectuating" its earlier judgment denying the state court plaintiff a Federal court injunction by reason of the Norris-LaGuardia Act's ban against Federal court injunctions in cases arising out of labor disputes, or (b) on the theory that Section 2283 is subject to implicit exception in cases where state law is allegedly preempted?

2. In the event that the lower courts here, despite the provisions of Section 2283, had the power to enjoin proceedings in a state court looking toward an injunction against picketing if that picketing could be said to be protected under the rationale of this Court's decision in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), was the picketing presented here in fact so protected under that decision's rationale? And if so, should not that decision be reconsidered?

3. Whether the injunction granted by the District Court here against the state court proceedings was precluded by Section 4(d) of the Norris-LaGuardia Act, which prohibits the grant of injunctions against the support of litigation by "any person participating or interested in any labor dispute . . . in any court . . . of any State," or by Section 7 of that Act, which prohibits the grant of injunctions without the making of certain findings, not made here, in "any case involving or growing out of a labor dispute"?

STATUTES INVOLVED

This case primarily involves the application of the anti-injunction statute, 28 U.S.C. § 2283, which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The case also involves the Norris-LaGuardia Act, 29 U.S.C. §§ 101 *et seq.*, which is set forth as Appendix I, pp. 27a *et seq.*

STATEMENT

This case is another in the series of cases before this Court related to the dispute between the Florida East Coast Railroad ("FEC") and the railway labor unions which have been on strike against it for as much as six years. Like two of the previous cases, it concerns the attempt of those unions to involve third parties in the dispute between the FEC and the unions. However, the legal and factual issues involved in this case are very different from those in the two cases which have previously come before this Court concerning the attempt of those unions to involve third parties in their dispute with the FEC.[3]

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[3] Those cases are *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen*, 385 U.S. 20 (1966), in which the Court affirmed by a four-to-four vote a judgment of the Court of Appeals for the Fifth Circuit, *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966), which by a two-to-one vote had held the Jacksonville Terminal Company, and two

In the first place, unlike those two previous cases, this case does not involve picketing of the Jacksonville Terminal Company facilities—facilities which are jointly owned by the FEC and the nonstruck carriers. This case involves picketing solely of the Moncrief Yard, wholly-owned by the Seaboard Coast Line Railroad Company, a nonstruck carrier. Despite the fact that in the two cases which have come before the Court, injunctive relief against the unions' picketing the jointly-owned Jacksonville Terminal facilities has been held unavailable, the unions have not sought to reinstitute picketing at that terminal. Instead, by this suit they are now attempting to establish their right to picket a major classification yard wholly-owned by one of the nonstruck carriers.

In the second place, this case does not involve the question of the propriety of an injunction restraining secondary picketing, but involves the extraordinary action of a Federal District Court in enjoining proceedings in a state court in the face of the anti-injunction statute, Section 2283 of the Judicial Code, and of the Norris-LaGuardia Act.

Background.—In May, 1966, certain rail unions which had a dispute with the FEC threw a picket line around the premises of the Jacksonville Terminal Company in an effort to make the Terminal Company and the other rail-

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of the carriers using it, to be barred from obtaining an injunction against the picketing of the Terminal Company by reason of the Norris-LaGuardia Act; and *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), in which a state court injunction against picketing the Terminal properties, obtained by the Terminal Company, was reversed by this Court by a four-to-three vote.

Other cases involving the FEC dispute are cited in the *Jacksonville Terminal* opinion, 394 U.S., at 371.

roads using its facilities stop doing business with the FEC. Suits for an injunction were filed successively in the Federal courts and the state courts; by two carriers and the Terminal Company in the Federal court and by the Terminal Company in the state court. While the Federal court injunction terminated in November, 1966, after this Court's four-to-four affirmance of the Fifth Circuit's judgment in *Atlantic Coast Line R. Co.* v. *Brotherhood of Railroad Trainmen,* 385 U.S. 20 (1966), the state court injunction remained in effect until this Court's decision in the spring of 1969 in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, which reversed it.

In 1967, while the state court injunction against picketing at the Jacksonville Terminal premises was in effect, the Brotherhood of Locomotive Engineers ("BLE") commenced picketing the Moncrief Yard, the major railroad yard of the ACL in Florida and a point through which virtually all the freight carried by ACL on its own lines to and from the Florida peninsula must pass. The ACL and the Seaboard maintain extensive service to the central and western portions of peninsular Florida on their own lines (now merged) and serve Miami via Jacksonville (the principal Jacksonville line passing through the Moncrief Yard) and Tampa on the west coast. The FEC serves only the east coast of Florida, its line running solely between Jacksonville and Miami.

The Moncrief Yard.—Moncrief Yard is a major classification yard wholly owned by SCL (McRae Tr. 21, 83, 84, 86-88). Virtually all freight carried by ACL to and from peninsular Florida moves through the Yard. (McRae Tr. 88) ACL does not provide FEC with switching or signal services at Moncrief (McRae Tr. 77, 78); ACL does not

repair or maintain FEC cars or locomotives or provide any other miscellaneous services to FEC (McRae Tr. 77, 79); and no FEC employees report to or depart from work at Moncrief Yard (McRae Tr. 78). There is no interlocking stock ownership between FEC and ACL. The tracks and real property of FEC and the ACL's Moncrief Yard do not adjoin. (McRae Tr. 43-45, 76)

The primary function of Moncrief Yard is classification, that is, breaking down incoming trains and transferring the cars to appropriate outgoing trains. The tracks which make up Moncrief Yard form one integrated operation. (McRae Tr. 56) All ACL main line tracks into and out of Florida pass through Moncrief Yard. (McRae Tr. 88) Each day, nine road freight trains moving to and from the North and four or five road freight trains moving to and from the South are classified in Moncrief Yard. (McRae Tr. 87). The vast majority of car movements within Moncrief Yard are from one ACL road train to another.[4] Because of the Yard's strategic function, the ACL cannot function without Moncrief Yard. (McRae Tr. 86)

Besides being a major classification yard of the ACL, and an essential point in its own services to peninsular Florida, the Moncrief Yard is also a place in which interchange is effected between the FEC and the ACL. A track into Moncrief Yard is designated for the movement into the Yard by FEC of northbound traffic destined for ACL and of southbound traffic delivered by ACL to FEC. Specified tracks within the Yard are designated for ACL-FEC interchange. (McRae Tr. 65) FEC employees place north-

[4] As an example, in December, 1966, 46,000 cars were handled through Moncrief Yard. Of these cars, 36,000 came into and went out of Moncrief Yard on ACL road trains. (McRae Tr. 94-95)

bound cars on specified tracks in the Yard and then deliver the car documents to ACL. (McRae Tr. 67, 80, 81) Thereafter, the car is "owned" by ACL, the movement is for the account of ACL, and ACL has the risk of loss or damage.[5] Likewise, southbound cars which are destined for the FEC are placed on certain designated tracks in the Yard by ACL employees, to be picked up by FEC employees. Until the car documents are transferred by ACL to FEC, these cars are the "property" and under the control of ACL. Thus, the only work done by the ACL employees at Moncrief Yard on the cars which have originated on the FEC and been left in the Yard or which will be picked up by the FEC from the Yard is the ACL's own work.

The Picketing.—The BLE commenced picketing Moncrief Yard on Sunday, April 23, 1967. (McRae Tr. 7, 8, 48) The picket signs were displayed most prominently at roadway entrances to employee parking areas. (McRae Tr.

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[5] Rule 7, Car Service Rules of the Association of American Railroads, Circular No. OT-10-B (revised 4/1/68), promulgated under § 1(10) of the Interstate Commerce Act, 49 U.S.C. § 1(10), provides in pertinent part:

> (A) Cars shall be considered as having been delivered to a connecting railroad when placed upon the track agreed upon and designated as the interchange track for such deliveries, accompanied or preceded by necessary data for forwarding and to insure delivery, and accepted by the car inspector of the receiving road.
>
> Notwithstanding the foregoing paragraph, the receiving road shall be responsible for the cars, contents and per diem after receipt of the proper data for forwarding and to insure delivery. . . .
>
> * * * * *
>
> INTERPRETATIONS
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> Question: After a car has been accepted by the inspector of the receiving road, is the delivering road relieved from responsibility for damage to car and contents?
>
> Answer: Yes.

7-11, 51-53) The message of the signs, of the handbills then distributed, and apparently of phone calls made during the night to some of the employees, was that ACL employees should report for work but should refuse to perform any service related to ACL cars which were eventually destined to or had originated on the FEC. (Evidentiary Exs. 1-3; McRae Tr. 14, 15, 52, 53) The ACL employees followed the request.[6] The result was an almost immediate and total breakdown in and blockage of operations in Moncrief Yard due to the failure of ACL employees to classify cars arriving on incoming road trains and to build up road trains outbound. (McRae Tr. 71, 72, 83, 84, 85) The rail operations disrupted in this fashion included the movement of thousands of rail cars destined to other points inside and outside Florida on the ACL, interchange between ACL and the Seaboard Air Line Railroad Company (despite the subsequent merger of these two lines, a similar disruption would occur today with respect to the physical interchange of cars which had been routed on the lines involved), interchange between ACL and the Southern Railway System, and switching and delivery of

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[6] The reaction of the employees is significant. After the picketing began, the switch crews assigned to move cars to and from tracks designated for placement of cars for interchange with FEC moved their switch engines into position but then refused to perform their work in the normal course and stepped down from their engines. (McRae Tr. 5, 6, 12-15, 57, 69, 70) Subsequently, as the ACL called other crew members to work, according to the procedures mandated by its binding and existing labor contracts, the crew members would report directly to the offices of the supervisory personnel and state that they would not perform their ordinary services. (McRae Tr. 20)

One road crew refused to take a train out of Moncrief Yard north to Waycross, Georgia, even though at the time of refusal the train had already been made up and all of the component cars were under the total and legal control of ACL. (Luckie Tr. 11, 22, 72, 79)

cars by ACL to industrial sites in metropolitan Jacksonville.

The picketing was directed solely at ACL employees who were performing duties for their own employer in relationship to rail cars "owned" by their employer. (McRae Tr. 96) The avowed purpose (which was accomplished) was to close down Moncrief Yard. (McRae Tr. 23) And, due not only to numerous practical problems but also to serious safety hazards, this result could not be avoided by the railroad's use of supervisory personnel. (McRae Tr. 84, 87-90)

The Federal Court Action.—The complaint in the present action was filed in the United States District Court for the Middle District of Florida by ACL against BLE on April 25, 1967. (Record 1-16) The only relief prayed for was an injunction against the picketing; damages were not sought. The ACL brought on a prayer for a temporary injunction that day, which the District Court the next day, April 26, 1967, denied on the basis of the 1966 ruling of the Fifth Circuit—affirmed by an equally-divided Court in this Court—in the case involving the Jacksonville Terminal, to the effect that the Norris-LaGuardia Act prevented the issuance of an injunction by a Federal court. (Appendix A, pp. 4a-5a, *infra*) At the request of the attorneys for the ACL, the summonses with complaint attached which had been issued for service upon the defendants were then not served, and the Federal court case lay completely dormant for over two years. No answer or counterclaim was filed by the BLE during that period.

The State Court Action.—The next day after the denial of the Federal court injunction, April 27, 1967, ACL filed

an action in a state court, the Circuit Court for Duval County, Florida, against the picketing of Moncrief Yard based solely upon state law, namely, the Florida Transportation Act, the Florida Restraint of Trade Law, and the Florida Labor Relations Law. An extensive hearing ensued at which considerable evidence and testimony was received, and the state court entered a temporary injunction on May 3, 1967. (Appendix B, pp. 6a-13a, *infra*) The BLE made no efforts to have this order reviewed or attacked for two years. However, on three occasions—one immediately after the filing of the complaint, one after the entry of the temporary injunction, and one in May, 1969—the BLE removed the suit to Federal court; but on each occasion, ACL's motion to remand was granted on the grounds that the District Court did not have original jurisdiction of the action under Sections 1331 and 1337 of the Judicial Code, since the action was brought solely under Florida law.[7]

In May, 1969, the BLE made application to the Circuit Court for Duval County to dissolve the injunction granted on May 3, 1967, on the grounds that this Court's decision of March 25, 1969, in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, precluded the application of state law and the grant of a state court injunction against the picketing presented by the case. ACL opposed the application, urging before the Florida

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[7] The three removal cases, in each of which a motion to remand was granted, are all in the United States District Court for the Middle District of Florida, and are Case No. 67-338-Civ.-J, filed April 27, 1967, and remanded the same day; Case No. 67-418-Civ.-J, filed May 23, 1967, and remanded July 6, 1967; and Case No. 69-351-Civ.-J, filed May 23, 1969, and remanded May 28, 1969. See Affidavit of F. X. Friedmann filed June 24, 1969, in the District Court.

Circuit Court that this Court's decision was clearly distinguishable and inapplicable to this case of picketing of a facility solely owned by a carrier not a party to the primary FEC labor dispute, a facility where none of the extensive services recited in this Court's opinion in the *Jacksonville Terminal* case (394 U.S., at 372-75, 389-90) were furnished to the FEC.[8]

Immediately after oral argument before the Florida Circuit Court on May 23, 1969, the BLE (a) made the third of its three unsuccessful attempts to remove the suit pending before the Florida Circuit Court to the Federal District Court, and (b) filed a handwritten answer in the Federal court proceeding which had been dormant for the two years after the ACL's application for a temporary injunction had been denied. (Record 22-26)

The Florida Circuit Court in a letter opinion rendered on June 3, 1969, viewed the picketing at Moncrief Yard as factually and legally distinguishable from that at the Jacksonville Terminal and declined to dissolve the injunction it had issued on May 3, 1967. (Appendix C, pp. 14a-15a, *infra*) At the hearing in the Florida Circuit Court, the BLE had requested that the injunction be made permanent; ACL did not object (Luckie 1969 Tr. 55), and the Florida Circuit Court's letter opinion indicated that the request of counsel for the BLE was granted and that counsel for the BLE could proceed to have a final judgment entered.[9]

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[8] See Transcript of Proceedings before Honorable Charles A. Luckie, May 29, 1969, pp. 34-46 (hereinafter "Luckie 1969 Tr.").

[9] Through August 14, 1969, counsel for BLE had not yet caused final judgment to be entered.

The Federal Court Injunction Against the State Court Proceeding.—The BLE did not pursue any steps in the Florida courts to obtain a review of the injunction or of the Circuit Court's action in refusing to dissolve it, notwithstanding the full availability of appellate remedies in the Florida state courts. Instead, the BLE the same day filed in the dormant Federal court proceeding in which it was the defendant a motion for preliminary injunction against the ACL's availing itself of the state court injunction.[10] (Record 29-32)

On June 19, 1969, the District Court denied a motion by the ACL to dismiss its complaint.[11] Over the objections of ACL, based on the anti-injunction statute (Section 2283 of the Judicial Code) and the Norris-LaGuardia Act, the District Court granted the BLE's motion for an injunction against the state court proceedings. (Appendix D, pp. 16a-18a, *infra*)

On June 26, 1969, ACL took an appeal to the Court of Appeals for the Fifth Circuit under 28 U.S.C. § 1292(a)(1), and sought a stay of the District Court's order pending consideration by the Court of Appeals of the appeal from the order granting the preliminary injunction against the state court proceedings. After denial by a single judge,

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[10] The injunction requested and granted was one "pending final hearing and determination of this action." The content of this term is hard to make out, since the BLE as defendant was not praying for any permanent relief in the matter and ACL at this point was seeking to effect a voluntary dismissal of its complaint, which voluntary dismissal it stated on the record before the District Court might be with prejudice. The BLE resisted the voluntary dismissal, with or without prejudice, of ACL's complaint.

[11] It was held that the filing of the handwritten answer by BLE took away ACL's right to a voluntary dismissal. See Appendix D, pp. 16a-17a, *infra*.

the application for a stay pending appeal was renewed and submitted to a three-judge panel of the Court of Appeals, consisting of Circuit Judges Bell, Ainsworth and Godbold. On July 7, 1969, the panel denied the stay application, citing as authority this Court's decision in the *Jacksonville Terminal* case, which did not, of course, involve Section 2283 of the Judicial Code (having arisen on certiorari to the state courts) but simply involved the question whether the state courts could enjoin picketing by the railroad brotherhoods at the Jacksonville Terminal properties. However, the panel "in view of the importance of the case" granted a ten-day temporary stay through July 17, 1969, to permit ACL to pursue other remedies. (Appendix E, pp. 19a-20a, *infra*)

In response to this suggestion by the Court of Appeals, ACL then filed a motion in which it waived its rights to further briefing and oral argument and consented to and requested the final disposition of the case on the merits on the basis of the record filed and the briefs already submitted, within the ten-day period provided for by the Court's order. (Record 533)[12] The purpose of ACL's motion was to consent, procedurally, to the entry of a judgment without further briefing in the Court of Appeals affirming the District Court so that ACL might petition for certiorari and apply for a stay pending certiorari.

The Court of Appeals on July 11, 1969, at first refused without explanation to enter a judgment on the merits. (Record 535)[13] ACL proceeded to make application to

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[12] In connection with the stay application to the Court of Appeals, the parties had already filed briefs aggregating 45 pages which had extensively discussed the merits of the appeal.

[13] The court also then denied a requested stay pending certiorari. Record 534, 535.

Mr. Justice Black on July 15, 1969, for a stay of the District Court's injunction pending review by this Court of the judgment finally to be entered by the Court of Appeals upon the appeal to it. After receiving an opposing memorandum of the BLE, Mr. Justice Black granted the stay application on July 16, 1969 (Appendices F and G, pp. 21a-24a, *infra*), observing that the questions presented under Section 2283 appeared "close, highly complex and difficult." (Appendix F, p. 22a, *infra*) Mr. Justice Black also cited the "widespread importance" of the questions and observed that their solution "might broadly affect the economy of the State of Florida, the United States, and interstate commerce." (P. 23a, *infra*) The order imposed a duty on ACL "to expedite all actions necessary to present its petition for certiorari here." (P. 23a, *infra*)[14]

Meanwhile, ACL had filed a petition for rehearing with the Court of Appeals with respect to the order of the Court of Appeals denying an expedited hearing and expedited determination of the appeal on its merits. (Record 536) On July 16, 1969, the Court of Appeals requested BLE to respond to this petition, and shortly thereafter the parties filed a stipulation with the Court of Appeals that that court might enter a judgment affirming the District Court's order, in the light of its indications as to its views of the substantive law expressed in its order denying the stay application. This stipulation was without prejudice to ACL's rights to judicial review. On July 17, 1969, the Court of Appeals affirmed the judgment of the District Court, again citing only this Court's decision in the *Jacksonville Terminal* case. (Appendix H, pp. 25a-26a, *infra*)

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[14] Mr. Justice Black on July 21, 1969, denied a petition for reconsideration filed by the BLE.

REASONS FOR GRANTING THE WRIT

A. *The District Court's Injunction Here Violated Section 2283 of the Judicial Code*

1. In this case, the action of the District Court in enjoining proceedings in the Florida state courts,[1] countenanced by the Court of Appeals, amounts to a flat violation of the anti-injunction statute, Section 2283 of the Judicial Code, and the established law as developed under it by this Court and by other courts of appeals.

Section 2283 provides that: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The leading case decided by this Court construing this provision is *Amalgamated Clothing Workers of America* v. *Richman Brothers Co.*, 348 U.S. 511 (1955). There, it was held that a Federal district court was without power to enjoin a state court injunction against certain labor union practices, despite the fact that under the substantive law as established by decisions of this Court,[2] the jurisdiction

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[1] While the injunction in form is simply one against ACL availing itself of the benefit of the proceedings before the state court, such an injunction has uniformly been treated as tantamount to an injunction against proceedings in a state court, for purposes of the Federal anti-injunction statute. See, *e.g.*, *Oklahoma Packing Co.* v. *Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940); *Amalgamated Clothing Workers of America* v. *Richman Brothers Co.*, 348 U.S. 511 (1955); *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 400 F.2d 320, 330-31 (5th Cir. 1968).

[2] The principal such case being *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468 (1955), a case decided only one week before the de-

of the state court was preempted by that of the National Labor Relations Board under the Labor Management Relations Act. The Court in *Richman Brothers* held that in Section 2283 Congress had made it clear that injunctive remedies in the lower Federal courts against state court proceedings were not to be substituted for the normal, orderly processes of state court appellate review and this Court's reviewing jurisdiction over the state courts by certiorari and appeal.[3] This accords with the fundamental

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cision in *Richman Brothers*, and acknowledged by the Court in *Richman Brothers* to be controlling on the merits. 348 U.S., at 512, 514.

[3] As early as the Act of March 2, 1793, c. 22, § 5, 1 Stat. 334, Congress sharply limited the power of Federal courts by providing that "no . . . writ of injunction [shall] be granted to stay proceedings in any court of the state . . . ." This provision became, without substantial change, § 720 of the Revised Statutes, Rev. Stat. § 720 (1875), and later § 265 of the Judicial Code of 1911, Act of March 3, 1911, c. 231, § 265, 36 Stat. 1162.

Little or no legislative history is available in connection with the 1793 Act. Congressional action in 1793 reputedly resulted from a report by Attorney General Edmund Randolph to the House of Representatives on December 27, 1790, who declared that "[I]t is enough to split the same suit into one at law, and another in equity, without adding a further separation, by throwing the common law side of the question into the State courts, and the equity side into the Federal courts." *Am. State Papers*, 1 Misc. No. 17, at 34, n. 8. Professor Charles Warren indicates that the Act is a significant illustration of the strong apprehension early felt by Congress of an encroachment by Federal courts on state court jurisdiction. See Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 347-48 (1930).

In the leading case of *Toucey* v. *New York Life Insurance Co.*, 314 U.S. 118 (1941), § 265, the predecessor of § 2283, of the Judicial Code was strictly interpreted by this Court in an opinion by Justice Frankfurter, as forbidding an injunction even where sought to prevent relitigation of a case fully tried in federal court under the single applicable law. Neither § 2283, passed subsequent to the *Toucey* decision, nor the Reviser's Note to that section, which indicated that the revision reversed *Toucey* on its facts, indicates congressional intent to provide Federal district courts with appel-

theory of the statute which expresses "an important Congressional policy—to prevent needless friction between state and federal courts." *Oklahoma Packing Co.* v. *Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9 (1940).

The Court in *Richman Brothers* also made it plain that an exception was *not* to be engrafted upon Section 2283 "whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.'" 348 U.S., at 515. The Court stated:

> "[W]e cannot accept the argument of petitioner and the [National Labor Relations] Board, as *amicus curiae*, that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is 'wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress.' No such exception had been established by judicial decision under former § 265 [the predecessor of § 2283, see n. 3, p. 17, *supra*]. In any event, Congress has left no justification for its recognition now." 348 U.S., at 515.

In short, the teaching of *Richman Brothers* is that the Federal district courts do not sit as appellate courts over the state tribunals in cases where preemption of state court remedies in labor and related matters are concerned. As the Fifth Circuit once put it, on an occasion when it was more faithful to Section 2283:

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late power over state court systems, and this is, of course, confirmed by this Court's subsequent decision in *Richman Brothers*.

"[A] Federal court [has] neither appellate nor supervisory control over a State . . . judge.

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"Plaintiffs filed a suit in the State court of Dallas County, Texas, which came up for hearing. . . . [T]he ruling of the Court was not acceptable to the plaintiffs and they come to the Federal court for a correction of such ruling and for instruction of the Federal judge as to how the case should be tried.

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"Nowhere has a Federal trial court been given supervisory or appellate jurisdiction over State judges." *Williamson* v. *Puertfoy,* 316 F.2d 774, 775 (5th Cir. 1963), *cert. denied,* 375 U.S. 967 (1964).

This case is governed in all respects by *Richman Brothers.* Indeed, it can be argued that this case is a stronger one for the application of the anti-injunction statute than *Richman Brothers.* In *Richman Brothers* it had been established that the state courts had no jurisdiction to grant the injunction against the picketing; yet this Court nonetheless held that a Federal court injunction against the state court's assuming jurisdiction was barred by Section 2283. 348 U.S., at 512. Here, the decision of this Court which is relied upon by the BLE in order to assert that the state court injunction against the picketing was erroneous repeatedly held that "the Florida courts are not pre-empted of jurisdiction over this cause." *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.,* 394 U.S. 369, 390 (1969); *id.,* at 375-77. In any event, the action of the lower courts in failing to follow *Richman Brothers* here provides a conflict with the

law as established by this Court which we submit this Court ought to resolve upon certiorari.

The decision of the Court of Appeals also creates a conflict between the circuits. The Courts of Appeals for the Second, Fourth and Eighth Circuits have consistently followed the teaching of this Court in *Richman Brothers* that Section 2283 prohibits enforcement of a Federal preemption defense, whether or not meritorious, by injunction against state court proceedings. See *International Association of Machinists* v. *United Aircraft Corp.*, 333 F.2d 367 (2d Cir. 1964), *cert. denied*, 379 U.S. 946 (1964); *German* v. *South Carolina State Ports Authority*, 295 F.2d 491 (4th Cir. 1961);[4] *NLRB* v. *Swift & Co.*, 233 F.2d 226 (8th Cir. 1956). The evident conflict created between the circuits by the decision below presents a further compelling reason for the grant of certiorari in this case.

2. Just as in *Richman Brothers*, none of the statutory exceptions to the prohibition of Section 2283 is present here: (a) The first exception permits an injunction to issue "as expressly authorized by Act of Congress." There is no such Act of Congress here, and, as a matter of fact, the BLE has never rested on this ground of exception. For the reasons discussed in *Richman Brothers*, 348 U.S., at 516-19, the general terms of the Railway Labor Act do not constitute any "express" authorization.

(b) Nor can it be said that the injunction granted here was justified by the exceptions[5] which permit the injunction

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[4] In *German*, the Court of Appeals underscored the point that the Federal courts should not undertake to look into the legality of the picketing before the state court. 295 F.2d, at 495.

[5] For reasons similar to those cited in *Richman Brothers*, 348 U.S., at 511, *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501 (1954),

of state court proceedings "where necessary in aid of its [the District Court's] jurisdiction, or to protect or effectuate its judgments."[6] The only proceeding pending before the District Court was ACL's own suit for an injunction against the same picketing, in which, the day after the suit was filed and two years before the BLE's motion for an injunction against the state court proceedings the

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is clearly distinguishable. That case turns upon the exception for injunctions necessary in aid of the District Court's jurisdiction. Under the facts of that case, the presence of the interim remedies in Federal court against secondary boycotts vested in the National Labor Relations Board under § 10(L) of the Labor Management Relations Act was found to be a sufficient authorization for the Board to obtain an injunction against proceedings in the state court by private parties where the Board had filed a § 10(L) complaint in the district court. Indeed, in *Capital Service* the Board was seeking a limited injunction under § 10(L), but which would permit certain aspects of the picketing. The employer then proceeded in state court to seek and obtain a much broader injunction completely prohibiting the picketing in question. Besides the other obvious bases of distinction of *Capital Service* (including the absence of any administrative regulatory regime here), it is clear, as we develop below, pp. 22-24, that there can be no conflict between the decision of the District Court in denying the 1967 injunction and in any action taken by the state court, since the sole basis for the denial of the injunction in 1967 in the District Court was the Norris-LaGuardia Act.

[6] The authorities indicate that the purpose of the exception for injunctions "necessary in aid of its jurisdiction" was to "make clear the recognized power of the Federal courts to stay proceedings in state cases removed to the district courts" (see Reviser's Note to § 2283) and to cover the situation of a "res" over which only one court could take jurisdiction. See, *e.g.*, *Hyde Construction Co.* v. *Koehring Co.*, 388 F.2d 501, 509 (10th Cir. 1968), *cert. denied*, 391 U.S. 905 (1968). The exception for injunctions necessary to "protect or effectuate" Federal court judgments was inserted to permit the Federal courts to enjoin the relitigation, in state courts, of cases and controversies fully adjudicated by the Federal courts. See Reviser's Note to § 2283, n. 3, p. 17, *supra*; see *Commerce Oil Refining Corp.* v. *Miner*, 303 F.2d 125, 127 (1st Cir. 1962). This case presents none of these situations.

District Court found that the only relief prayed for by the ACL could not be granted by reason of the Norris-LaGuardia Act's ban on injunctions.[7] The suit had then lain dormant for two years until it was revived by the defendant BLE as a purported basis for the injunction against state court proceedings now under review. BLE had never sought any affirmative relief in that suit until it filed the motion for an injunction against the state court proceedings.

It could not conceivably be claimed that the proceedings in the District Court could be said to require an injunction against the state court proceedings as necessary to aid them, or as necessary to protect or effectuate any judgment to be entered in the District Court proceedings. The sole relief sought by ACL in the District Court proceeding was an injunction against the picketing. The holding of the District Court was that such an injunction could not be granted, by reason of the Norris-LaGuardia Act.[8]

The fact that the District Court held that it was without power to grant an injunction by reason of the Norris-LaGuardia Act does not mean that it had to enjoin proceedings for a similar injunction sought before the state courts in order to aid its jurisdiction or to protect and

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[7] Our position does not rest on whether the fact that the District Court had no power to grant the only remedy against BLE prayed for by the ACL's complaint means that the District Court had no "jurisdiction" in the sense of § 2283 that an injunction against the state court proceedings was necessary to aid. *Cf. Avco Corp.* v. *Aero Lodge No. 735*, 390 U.S. 557 (1968).

[8] In arguing the case on the temporary injunction application in 1967, respondent's counsel engaged in the following colloquy:

"The Court: You're basing your case solely on the Norris-LaGuardia Act?

"Mr. Milledge [attorney for BLE]: Right." MacRae Tr. 169.

effectuate its judgments. For the Norris-LaGuardia Act was intended essentially as a limitation on the Federal equity power, the power of the Federal courts to grant injunctions. The Act "explicitly applies only to the authority of United States courts 'to issue any restraining order or injunction.' All other remedies in Federal courts and all remedies in state courts remain available." Frankfurter & Greene, *The Labor Injunction* (1930), p. 220. "The bill does not take one iota of jurisdiction. . . . from the state courts and does not change any state law." Remarks of Representative LaGuardia, 75 Cong. Rec. 5478.

Thus, the holding of the District Court to the effect that ACL could not obtain an injunctive remedy in this matter is complete in and of itself. It does not affront the District Court's jurisdiction for a state court then to exercise its jurisdiction; nor does such a holding by a state court in any way interfere with any judgment by the District Court. "If the enjoined state proceeding could not prejudice any otherwise proper disposition of some claim pending in the federal suit, the injunction cannot be in aid of invoked federal jurisdiction." *Muscarelle, Inc.* v. *Central Iron Mfg. Co.*, 328 F.2d 791, 794 (3d Cir. 1964).

In opposing the Stay Application in this Court, BLE urged that the April 26, 1967, order of the District Court constituted a full and complete, and presumably exclusive, determination of the legal rights of the parties to the suit, and argued from this premise that an injunction against a subsequent state court injunction would, on this account, be justified by the exceptions in Section 2283. We need not comment on whether this follows, since this contention clearly overstates the effect of the District Court's order of April 26, 1967. BLE's argument simply cites the Dis-

trict Court's conclusions of law (Appendix A, pp. 3a-4a, *infra*) out of context. A full reading of those conclusions of law makes it plain that the court's ultimate holding is that the Norris-LaGuardia Act bars the requested injunction. The subsidiary conclusions as to the right of self-help having matured as between the direct parties to the FEC-BLE dispute simply are articulations of the reasons why the Norris-LaGuardia Act was held applicable to bar the injunction, notwithstanding the "accommodation" cases which indicate that where the Railway Labor Act's processes are still available between the parties—as they were no longer between FEC and BLE—the Norris-LaGuardia Act does not bar an injunction. See, *e.g., Brotherhood of Railroad Trainmen* v. *Chicago River & I.R. Co.*, 353 U.S. 30, 40 (1957). See *Brotherhood of Locomotive Engineers* v. *Baltimore & O.R. Co.*, 372 U.S. 284 (1963).

Indeed, the controlling authority cited by the District Court in this connection in its April 26, 1967, order was this Court's four-to-four affirmance, 385 U.S. 20 (1966), of the Fifth Circuit's ruling that the Norris-LaGuardia Act barred a Federal injunction against the picketing at the Jacksonville Terminal. *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (1966). But that decision made it plain, indeed "emphasized," that in a decision turning on the Norris-LaGuardia Act the sole effect of the court's action is to deal with the "enjoinability" of the defendants' activity "and not with its legality for any other purpose." *Id.*, at 653. It is therefore completely without foundation to suggest that the District Court's April 26, 1967, order somehow amounts to a complete and exclusive declaration of the rights of ACL and BLE, furnishing a predicate for an injunction against state court proceedings under the exceptions for injunctions

"necessary in aid of" the District Court's jurisdiction or "necessary . . . to protect or effectuate its judgments." The District Court in 1967, in denying ACL a temporary injunction, could not and did not purport to define the ultimate Federal legal rights of the parties, let alone their rights under state law.[9]

The principal authority relied upon by the District Court[10] for the applicability of this exception to Section 2283 was *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969). There, the Court of Appeals held it proper for a district court to enjoin the enforcement of a state court injunction which prohibited picketing by a union subject to the Railway Labor Act where extensive proceedings respecting the dispute had already been had in Federal court and injunctive orders there entered in favor of the party seeking the injunction against the state court proceedings. The court there held (400 F.2d, at 330-34) that such an injunction was appropriate under the exception to Section 2283 which permits injunctions where necessary to protect or effectuate the judgments of a district court. But the specific reason for this holding was that the District Court had previously issued a mandatory injunction, under Section 6 of the Railway Labor Act, re-

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[9] Accordingly, the case cannot even be claimed to fall within the scope of the 1948 revision referred to in the Reviser's Note as overruling the *Toucey* doctrine in situations of relitigation of a case fully tried. See n. 3, p. 17, *supra*.

[10] The Court of Appeals relied solely on the *Jacksonville Terminal* case, 394 U.S. 369, which did not involve an injunction against state court proceedings or any question under § 2283 but only questions of the substantive law to be followed by state courts. It apparently believed that the preemption issue could be litigated through a proceeding in the District Court despite § 2283. We refute this in point 1, above.

quiring management, which had refused to bargain with the union in the manner required by Section 6 of the Act, to proceed so to bargain. Indeed, the case was twice before the District Court for the fashioning of a detailed remedial decree to redress the wrongs committed by management. The Court of Appeals concluded that the District Court's mandatory order requiring the parties to bargain as required by Section 6 could be frustrated by the pendency of a state court injunction which limited the parties' rights of self-help if the bargaining proved inconclusive. See 400 F.2d, at 331.

Here, there is no order of the District Court requiring the parties to this suit to take any action with respect to each other. Indeed, the only affirmative order ever entered by the District Court in this matter was its order enjoining proceedings in the state court. It cannot remotely be said that the injunction against the state court proceedings granted by the District Court is necessary to protect or effectuate any other order or judgment which that court has entered. To say that the injunction was necessary to effectuate any judgment of the District Court is simply to lift oneself by one's bootstraps.[11]

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[11] The District Court seemed to have the view (Appendix D, pp. 17a-18a, *infra*), based upon an apparent misreading of the *Richman Brothers* opinion, that the meaning of § 2283 was that wherever the District Court had jurisdiction apart from § 2283, it could proceed to enter an injunction against state court proceedings. If this were what § 2283 meant, it would be essentially meaningless; on its face, § 2283 is a prohibition against the granting of injunctions in cases otherwise within the jurisdiction of the District Court. The exception in question is not one simply for cases where the grant of an injunction is within the District Court's jurisdiction; it is for cases where the grant of an injunction is "necessary in aid of" the District Court's jurisdiction.

3. The purpose of the motion of the BLE, countenanced by the District Court and the Court of Appeals, is simply to make an injunction proceeding in the Federal court serve as substitute for the normal appellate procedures, including review by this Court, with respect to a judgment in the state court. Indeed, the only authority cited by the Court of Appeals was this Court's decision in *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369 (1969), a decision which arose on certiorari to the state courts and which has nothing whatsoever to do with Section 2283 or the exceptional circumstances under which a lower Federal court may enjoin proceedings in a state court.[12] It is plain that the Court of Appeals took the view that despite the anti-injunction statute, it was at liberty to determine the correctness of the state court's order in the injunction proceedings in Federal court, and by its citation of the *Jacksonville Terminal* case, it indicated that it believed that the state court acted erroneously and that, accordingly, its judgment was properly enjoined. This is the very thing which

[12] If the theory of the courts below—that an injunction against state court proceedings issued by a Federal court can be made to serve as a substitute for the normal processes of appeal and certiorari in a labor preemption case, at least after a district court has refused, by reason of the Norris-LaGuardia Act, to enjoin the labor conduct in question—is correct, it was hardly necessary in the *Jacksonville Terminal* case itself for the brotherhoods to have pursued their remedies through the state courts and to this Court on certiorari. Since in that very case a Federal court injunction against the Jacksonville Terminal picketing had been held barred by the Norris-LaGuardia Act, *Brotherhood of Railroad Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F.2d 649 (5th Cir. 1966), *aff'd*, 385 U.S. 20 (1966), the same legal theory that is advanced here would have supported the District Court, upon receipt of the mandate of the Court of Appeals' holding the Federal injunction barred by reason of the Norris-LaGuardia Act, in enjoining the proceedings relating to the Jacksonville Terminal in the state court.

this Court's decision in *Richman Brothers* teaches may not be done. See point 1, pp. 16 *et seq., supra.*

As we have demonstrated above, under the *Richman Brothers* decision of this Court, there is no basis for the Federal courts to consider a preemption defense or other Federal defense against state court proceedings, however well founded, through the extraordinary remedy of an injunction against the state court proceedings. But even if there were, we would call to the Court's attention that *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co., supra,* does not in any event establish that the BLE had a valid defense in the state court proceedings.

In the *Jacksonville Terminal* case decided on March 25, 1969, this Court, by a four-to-three plurality[13] held that a state court injunction against picketing of the jointly-owned Jacksonville Terminal facility could not be maintained. The sharply-divided Court stressed the joint ownership of the Terminal Company facility by the struck FEC together with the other carriers (394 U.S., at 372) and the unusual nature of the joint venture agreement providing for the joint management of the facility by the FEC and the other carriers (394 U.S., at 373, n. 5). The fact that the Terminal Company provided various services necessary to the FEC's operations, including switching, signaling, track maintenance, and repairs on its cars and engines, was stressed. (394 U.S., at 373) The Court concluded, as had the Fifth Circuit in the case involving the Federal court injunction against picketing of the Terminal Company, that "despite the legal separateness of the Ter-

[13] Justices Harlan, Brennan and White and former Chief Justice Warren formed the majority. Former Justice Fortas and Justice Marshall did not participate.

minal Company's entity and operation, it cannot be disputed that the facilities and services provided by the Terminal Company *in fact* constitute an integral part of the day-to-day operations of the FEC. . . ." (*Ibid.*)

In analyzing the legal issues and drawing upon an analogy to the situation prevailing under the National Labor Relations Act, the Court observed that if the "common situs" rules applied under that Act were applied to the facts of the Jacksonville Terminal property, "considering, for example, the FEC's regular business activities on the terminal premises, FEC's relationship with respondent and the other railroads using the premises, the mixed use in fact of the purportedly separate entrances, and the terminal's characteristics which made it impossible for the pickets to single out and address only those secondary employees engaged in work connected with FEC's ordinary operations on the premises—the state injunction might well be found to forbid petitioners [the unions] from engaging in conduct protected by the National Labor Relations Act." 394 U.S., at 389-90.

In the case of the Moncrief Yard, no such situation is presented. The Moncrief Yard is not part of the Jacksonville Terminal common facilities; while at one point it adjoins the Jacksonville Terminal properties, the functions performed in the two locations are completely different and the factors of common operation and use, so heavily relied upon by the Court in *Jacksonville Terminal,* are completely lacking as to the Moncrief Yard. The Moncrief Yard is owned solely by the Seaboard Coast Line Railroad. FEC neither exercises nor participates in the exercise of any managerial discretion at the yard. No SCL employees engaged in work connected with the FEC's operations work

there. The yard performs no services for the FEC. No FEC cars or engines are repaired or serviced there.

Moncrief Yard is not a mere interchange facility serving and controlled by a group of carriers. The primary purpose of Moncrief Yard is the classification of ACL rail traffic in no way connected with the FEC. The only relationship that the yard has with the FEC is "pick-up and delivery": FEC employees bring cars to the premises on a designated track, which cars are left to be picked up by SCL employees and included as part of SCL's on-going train movements and that, vice versa, SCL employees cut out from their trains cars which will be handled southbound along the east coast of Florida by the FEC, to be picked up by FEC employees.[14] That interchange is required by Federal law and mandated by an existing Federal court injunction. Interstate Commerce Act, 49 U.S.C. §§ 1(4), 1(11), 1(15), 1(17) and 3(4); *Florida East Coast R. Co.* v. *Jacksonville Terminal Co., et al.*, U.S.D.C., M.D. Fla., No. 63-16-Civ-J, Order of January 30, 1963. At the point when ACL employees refused to move rail cars in Moncrief Yard, the cars were legally and factually

[14] In opposing the Stay Application in this Court, respondents claimed that Moncrief Yard "is an integral and necessary part of FEC's operations" and that the District Court's order of April 26, 1967, so held. This is not the case. All that that order found was that *"The use of ACL's Moncrief Yard by FEC to receive and deliver freight* is an integral and necessary part of FEC's operations." (Appendix A, p. 3a, *infra;* emphasis supplied.) There is a considerable difference. The holding simply means that FEC needs to interchange with carriers whose lines extend beyond Florida in order to carry on its business and that this interchange is in fact performed by the FEC dropping off and picking up cars at Moncrief Yard. The finding is not to the effect that Moncrief Yard is a place devoted to serving or doing the work of FEC, as this Court apparently held to be the case of the Jacksonville Terminal facilities in the *Jacksonville Terminal* case. 394 U.S., at 373.

"owned" and controlled by ACL; FEC had nothing more to do with them.

This Court has twice held that FEC employees could picket the Jacksonville Terminal, which this Court characterized as a "common situs" of FEC and the other carriers. 394 U.S., at 389-90. Curiously enough, the unions have not exercised this privilege and now seek to move north to picket a totally separate and innocent carrier at a location which can hardly be called a "common situs." Neither Federal law nor any established Federal labor policy or decision of this Court dictates that this picketing be free from restraint under state law. The assertion that it does means that any railway labor dispute which has matured to the point of self-help as between the parties may form the basis for an escalation of their economic conflict to involve innocent third-party carriers without apparent geographic limit. For if the Moncrief Yard can be tied up because FEC cars come there, other classification yards throughout the country through which those cars successively move could receive similar treatment. Even as applied to a "common situs" situation, the divided Court in the *Jacksonville Terminal* decision candidly characterized the result it reached as "unsatisfactory." 394 U.S., at 392. The Moncrief picketing does not involve the judiciary in the task of unraveling the problems of what sort of picketing might be permitted in a "common situs" situation, a task which the Court declined to undertake in *Jacksonville Terminal*. See *id.*, at 388-90. For the conclusion to be reached that there is a Federal inhibition against any interference with picketing as far removed from the normal processes of self-help by one disputant against the other as that presented here would be to stretch the facts

of *Jacksonville Terminal* well beyond their breaking point.[15]

Accordingly, even if it were somehow appropriate—despite Section 2283 and the *Richman Brothers* decision construing it—for the District Court to pass on the question whether there was a substantive basis for the state court injunction given this Court's decision in *Jacksonville Terminal*, the answer is that the state court did have a substantial basis for distinguishing the cases.[16] While we submit that the difference in the facts recited above establishes a difference in legal treatment, certainly the question is substantial enough to forbid the District Court from engrafting another exception upon Section 2283 by short-circuiting the normal appellate review procedures with respect to the state court's order.

B. *The District Court's Injunction Is Also Prohibited by the Norris-LaGuardia Act*

Finally, although the District Court and the Court of Appeals uniformly ignored the point, it appears plain that

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[15] Certainly, the general language of the Court at the conclusion of its opinion in *Jacksonville Terminal*, 394 U.S., at 392-93, so often cited by the respondents in favor of a general *carte blanche* to engage in any and all activities against third parties (see, *e.g.*, Opposition to Application for Stay, p. 4), must be read in the light of the specific facts presented in the *Jacksonville Terminal* case.

[16] However, we also tender to the Court a third-level question, which we of course contend that the Court need not reach. That question is whether—assuming that despite *Richman Brothers* a state court order may be enjoined by a Federal court here consistently with § 2283, and assuming (which we again deny) that there is no controlling factual and legal distinction between the question of availability of state court remedies against picketing at Moncrief Yard and the picketing at the jointly-owned Jacksonville Terminal facilities—the decision in the *Jacksonville Terminal* case, reached as it was by less than a majority of a grievously divided Court, should be reconsidered.

the District Court's injunction is violative of the Norris-LaGuardia Act's ban on injunctions. The District Court held that ACL's injunctive remedy against the picketing involved a case "arising out of a labor dispute" and hence fell within the Norris-LaGuardia Act's ban on injunctions. It must follow equally that the counter-injunction entered by the District Court against enforcement of the state court proceedings, which is based upon the same set of operative facts, likewise falls within the letter and the spirit of that Act.

In the first place, Section 4(d) of the Act absolutely prohibits injunctions against any person who is "aiding any person participating or interested in any labor dispute who . . . is prosecuting, any action or suit in any court . . . of any State." See Appendix I, p. 29a, *infra*. The briefest of references to the District Court's injunction (Appendix D, p. 18a, *infra*) makes it plain that this is precisely what the District Court has done. Secondly, Section 7 of that Act makes it plain that no Federal court has power to issue *any* injunction "in any case involving or growing out of a labor dispute" except upon the fulfillment of certain procedures and the making of certain findings, including a finding "that complainant has no adequate remedy at law." Clearly the availability of the normal appellate remedies to the BLE in the Florida state courts and in this Court would preclude the making of any such finding; and, indeed, there was not even any pretense in the District Court of making *any* findings in accordance with Section 7 of the Act.[1]

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[1] In opposing the Stay Application, the BLE contended that the Norris-LaGuardia Act was not applicable because the conduct enjoined by the District Court was not conduct of the sort protected against injunctions by § 4 of the Act. Opposition, pp. 11-12. This contention is wrong for a number of reasons. In the first

The only argument that can be made against the applicability of the Norris-LaGuardia Act here appears to be the general argument, made by BLE, that the Norris-LaGuardia Act does not apply to injunctions against management as opposed to those against labor.[2] The only support for this startling proposition is a dictum in *Brotherhood of Locomotive Engineers* v. *Baltimore & O.R. Co.*, 310 F.2d 513, 518 (7th Cir. 1962). The dictum in that case stands alone for this remarkable general proposition, a proposition which finds no support in the statutory text. Where this Court has upheld the grant of an injunction against management despite the Norris-LaGuardia Act, by reason of the necessity in a specific case of accommodating that Act to other statutes, it has taken pains to avoid any such sweeping proposition. See, *e.g.*, *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 488, 457-59 (1957).

The Act does not prohibit injunctions simply against labor or simply against management; it denies the courts of the United States jurisdiction, subject to certain exceptions, to issue any injunction "in any case involving or growing out of a labor dispute." It is clear that the contention that the Norris-LaGuardia Act does not apply here, which was upheld by the courts below, can only be supported by reference to arguments of extraordinary breadth and char-

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place, Sections 4 and 7 are independent prohibitions; an injunction is barred if it violates either section. In the second place, as we have indicated above, Section 4(d) was in fact violated by the injunction.

[2] The BLE relied upon this argument in opposing the Stay Application. Opposition, p. 12.

acter; this factor in itself suggests that this question is one calling for the attention of this Court.

CONCLUSION

This case presents important issues arising under Section 2283 of the Judicial Code, and involves an apparent departure by the lower courts from the controlling precedents in this Court under that statutory provision. Moreover, even if the lower courts were correct in their application of Section 2283, there are serious questions as to their construction of this Court's substantive decision in the *Jacksonville Terminal* case.[3] Important issues as to the application of the Norris-LaGuardia Act are also presented.

As Mr. Justice Black recognized in granting the Stay Application, this case, involving the picketing of a major rail artery of the SCL into peninsular Florida, poses questions "broadly affect[ing] the economy of the State of Florida [and] the United States." (Appendix F, p. 23a, *infra*) Rail transportation into peninsular Florida will be grievously affected should the action of the lower courts in enjoining the proceedings in the state court be permitted to stand. Thus, with the legally important issues, the factual importance of the case at bar unites in making this case an appropriate one for certiorari.

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[3] If this question is reached, and if it is determined that the courts below accurately construed this Court's decision in *Jacksonville Terminal*, we also suggest that this case is an appropriate vehicle to determine whether that decision, rendered by a grievously-divided Court, should be reconsidered. See n. 16, p. 32, *supra*.

Accordingly, for the reasons stated, this petition for certiorari should be granted.

Respectfully submitted,

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August, 1969

APPENDIX A

Order Denying Application of Plaintiff for Temporary Injunctive Relief—Federal Case—April 26, 1967

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; *et al.*,

Defendants.

This cause came on to be heard on April 25, 1967, upon the plaintiff's application for temporary injunctive relief against defendants. Upon evidence introduced by plaintiff and defendants, and upon arguments by respective counsel, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The plaintiff, Atlantic Coast Line Railroad Company (ACL), is an interstate railroad company, subject to the Interstate Commerce Act, 49 U.S.C. § 1, et seq., and the Railway Labor Act, 45 U.S.C. § 151, et seq.

2. The defendant, Brotherhood of Locomotive Engineers (BLE), is a labor organization under the Railway Labor Act which represents the craft of locomotive engineers employed on many railroads including the plaintiff, ACL, and the Florida East Coast Railway Company (FEC). The individual defendants are officers or members of BLE.

3. In 1964 FEC issued to BLE a proposal under Section 6 of the Railway Labor Act, 45 U.S.C. § 156, to change the rules, rates of pay and working conditions of FEC engineers. This proposal was processed under the procedures of the Railway Labor Act. In February, 1967, the National Mediation Board proffered arbitration to FEC and to BLE. BLE accepted arbitration of the dispute and FEC declined. The procedures of the Railway Labor Act having been exhausted, on March 13, 1967, FEC unilaterally put into effect the proposed contract revisions for engineers, and BLE called a strike against FEC.

4. At its northern terminus in Jacksonville, Florida, FEC interchanges freight traffic with ACL, Seaboard Air Line Railroad Company and Southern Railroad Company. This interchange is made with Seaboard and Southern upon the premises of the Jacksonville Terminal Company. Interchange between FEC and ACL is performed in the Moncrief Yard facility of ACL. FEC trains operated by striker replacement crews daily enter and operate in this ACL yard for the purpose of delivering and receiving interchange traffic. This interchange traffic averages 420 cars per day or over 150,000 cars per year. The interchange of freight with ACL constitutes approximately 60% of all freight received and delivered by FEC at its northern terminus.

5. The use of ACL's Moncrief Yard by FEC to receive and deliver freight is an integral and necessary part of FEC's operations.

6. Commencing on Sunday, April 23, 1967, BLE caused pickets to be placed at the employee entrance to Moncrief Yard. These pickets, by signs and pamphlets, requested the ACL employees to refuse to handle interchange traffic to and from FEC. Since the picketing commenced ACL engineers have refused to deliver freight to those tracks in Moncrief Yard designated for delivery to FEC, and have refused to receive freight from those tracks where FEC trains and crews have placed freight for delivery to ACL.

7. The effect of this picketing will be to deprive FEC of freight traffic to and from ACL. In addition, it will cause severe congestion of ACL's Moncrief Yard.

Conclusions of Law

1. This suit arises under the Railway Labor Act, 45 U.S.C. § 151 et seq., and the Interstate Commerce Act, 49 U.S.C. § 1, et seq. This Court has jurisdiction of the case under 28 U.S.C. § 1337.

2. The Interstate Commerce Act regulates the relationships among interstate railroad carriers and between such carriers and the public. The Railway Labor Act regulates the relationships between railroad carriers and railroad employees.

3. The parties to the BLE-FEC "major dispute", having exhausted the procedures of the Railway Labor Act, 45 U.S.C. § 151, et seq., are now free to engage in self-help.

Brotherhood of Locomotive Engineers v. *Baltimore & O. R.R.*, 372 U.S. 284 (1963).

4. The conduct of the FEC pickets and that of the responding ACL employees are a part of the FEC-BLE major dispute. *Brotherhood of Locomotive Firemen and Enginemen* v. *Florida East Coast Ry.*, 346 F. 2d 673 (5th Cir. 1965).

5. The conduct of the ACL employees creates neither a major nor a minor dispute with ACL. See *Chicago & Illinois Midland Ry.* v. *Brotherhood of R.R. Trainmen*, 315 F. 2d 771, 776 (7th Cir. 1963) (Swygert, J., dissenting).

6. The "economic self-interest" of the picketing union in putting a stop to the interchange services daily performed within the premises of plaintiff's yard facilities, and in the normal, day-to-day operation of FEC trains operating with strike replacement crews within these facilities is present here. The "economic self-interest" of the responding employees in refusing to handle this interchange and in making common cause with the striking FEC engineers is similarly present. *Brotherhood of R.R. Trainmen* v. *Atlantic Coast Line R.R.*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

7. The Norris-LaGuardia Act, 29 U.S.C. § 101, and the Clayton Act, 29 U.S.C. § 52, are applicable to the conduct of the defendants here involved. See *Brotherhood of Locomotive Firemen and Enginemen* v. *Florida East Coast Ry.*, 346 F. 2d 673 (5th Cir. 1965); *Brotherhood of R.R. Trainmen* v. *Atlantic Coast Line Railroad*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U.S. 20 (1966).

Upon consideration, it is

ORDERED that plaintiff's application for temporary injunctive relief is denied.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of April, 1967.

/s/ WM. A. MCRAE, JR.
Judge

Copies to counsel

APPENDIX B

Order for Temporary Injunction—State Case—May 3, 1967

IN THE

CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT

IN AND FOR DUVAL COUNTY, FLORIDA

Case No. 6735-36-

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; J. E. EASON, individually and as an official of said Brotherhood; J. D. SIMS, individually and as an official of said Brotherhood; H. M. SAWYER, individually and as a member of said Brotherhood; W. K. MORRIS, individually and as a member of said Brotherhood; and G. Q. RUTLAND, individually and as a member of said Brotherhood,

Defendants.

This cause came on to be heard upon plaintiff's verified complaint and upon plaintiff's prayer for a temporary injunction. The Court has considered the evidence in support of plaintiff's prayer for a temporary injunction and has considered the arguments of counsel. The Court finds as follows:

1. This action arises under the Constitution and Laws of the State of Florida, including the Declaration of Rights of the Florida Constitution; the Florida Restraint of Trade Laws, Chapter 542, Florida Statutes; the Florida Labor Laws, Chapter 447, Florida Statutes; and the Florida Transportation Act, Chapter 350, Florida Statutes. This court has jurisdiction of the subject matter and of the parties hereto.

2. Plaintiff, Atlantic Coast Line Railroad Company (hereinafter "ACL") is a common carrier authorized to do business in the State of Florida. Plaintiff as a common carrier serves numerous communities within the State of Florida, in addition to the City of Jacksonville and County of Duval and provides extensive passenger, mail, freight, including perishable freight, bill and express laden services to these communities. Plaintiff is further obligated under the aforesaid Florida Transportation Act to provide interchange services with various connecting railroad common carriers including the Florida East Coast Railway Company (hereinafter "FEC").

3. Defendant Brotherhood of Locomotive Engineers (hereinafter "BLE") is an unincorporated labor organization composed solely of members who are employees of railroad carriers subject to the Railway Labor Act, 45 U.S.C. §151, et seq. Defendant J. E. Sims is Assistant Grand Chief Engineer of the BLE, and by his own admission is in charge of promoting the acts hereinafter enjoined. The other defendants, individually and as agents of defendant Brotherhood, have participated in active concert with defendant Sims. The members of the BLE employed by the FEC are on strike against the FEC. The ACL has valid

labor agreements between its employees represented by their respective Brotherhoods, including defendant BLE, which are presently in full force and effect. There is no labor dispute of any kind between ACL and its employees which gives rise to the acts hereby enjoined. There is no labor agreement or labor dispute between ACL and the employees of FEC.

4. On Sunday, the 23rd day of April 1967, the BLE and the Local Lodge Division 823 of BLE by and through their officers and members, including individual defendants J. D. Sims, J. E. Eason, H. M. Sawyer, W. K. Morris and G. Q. Rutland, proceeded to picket and patrol at employee entrances to the property and interchange yard of the ACL in Duval County, Florida, known as Moncrief Yard and to disburse pamphlets to the ACL employees going to work through said entrances. The express and manifest intent of the defendants in distributing the pamphlets was to induce the employees of ACL in Moncrief Yard to refuse to handle, move or carry out their regularly assigned duties with regard to any ACL railroad car which had arrived in Moncrief Yard from the FEC or which had arrived in Moncrief Yard destined to the FEC. Defendants also seek to induce and coerce plaintiff to refuse interchange with the FEC and thus to prevent competition in transportation of commodities by FEC. The avowed purpose of the picketing is to cause the plaintiff and its employees to cease furnishing interchange to the FEC and thus to bring the operation of the FEC to a halt; the result of the picketing is considerably more broad, as stated below. The intent and purpose of this picketing and distribution of pamphlets was not lawfully to advertise or to advise either the public in general or the employees of the ACL of the BLE labor

dispute with FEC but was to accomplish various purposes, described below, which are in violation of the law of the State of Florida.

5. As a result of the inducement and coercion by the BLE and other defendants through picketing of the ACL employee entrances and through the distribution of pamphlets, the employees of ACL in Moncrief Yard have refused to handle, move or interchange any ACL railroad car arriving from or destined to the FEC, which refusal has had and will have the following results:

(a) Disruption of the interchange operations of the ACL in Moncrief Yard;

(b) Effective blockade of railroad cars destined to points within and without the County of Duval and State of Florida;

(c) Stoppage of cars handling perishable goods and United States mail;

(d) Inability to properly serve shippers within and without the County of Duval due to interference with traffic patterns and schedules and due to the necessity of using supervisory personnel from other points on the ACL to operate Moncrief Yard;

(e) Interference with the effective interchange of freight to and from other connecting railroad common carriers, including the Jacksonville Terminal Company, the Seaboard Air Line Railroad Company, Southern Railway System, FEC and others;

(f) Substantial loss of profits and revenue to ACL by diversion of traffic and loss of traffic.

The picketing and other aforementioned activities of defendants, if resumed, will cause plaintiff irreparable harm for which no adequate remedy at law exists and will adversely affect all of the people who are serviced by and do business with plaintiff and all railways served by plaintiff. It would further adversely affect large economic areas of the State of Florida which rely upon rail service by plaintiff. Far greater injury will be inflicted upon plaintiff, employees of plaintiff, and citizens of the State of Florida by denial of plaintiff's application for temporary injunction than will result to defendants by granting such relief.

6. The decision of this Court is not made upon the basis of violence. There is no evidence in the record of any violence or threat of violence involved in the picketing.

7. The picketing and distribution of pamphlets by the defendants is illegal under the law of the State of Florida for the following reasons:

(a) The defendants' acts constitute coercive pressure on the ACL and its employees which is unlawful and contrary to the established public policy of the State of Florida;

(b) The picketing is outside the area of the struck industry, the FEC, in violation of the aforesaid Florida Labor Law, and is in the nature of a secondary boycott;

(c) The defendants seek to force plaintiff to violate its statutory duties under the aforesaid Florida Transportation Act to provide service to its various shippers and to provide interchange service to the FEC, which is illegal not only under the Florida Transportation Act, but also under the aforesaid Florida Restraint of Trade Laws;

(d) The inducements and coercions of defendants constitute a tortious interference with the contractual relationship between ACL and its employees and between ACL and its various shippers;

(e) Said inducements and coercions of defendants constitute an unwarranted and unconstitutional interference with the business of the ACL and constitute a tortious interference with the prospective business advantage of ACL; and

(f) Said actions operate as a restraint upon trade in violation of the Florida Restraint of Trade Laws and seek to compel ACL and its employees to enter into a combination with defendants to prevent competition in transportation of merchandise, produce and commodities by FEC.

IT IS, THEREFORE,

ORDERED that the defendants, Brotherhood of Locomotive Engineers, Local Lodge Division 823 of the Brotherhood of Locomotive Engineers, J. E. Eason, J. D. Sims, H. M. Sawyer, W. K. Morris, G. Q. Rutland, individually, and their officers, agents, servants, employees, representatives and members, when said members are acting as officers, agents, servants, employees or representatives of defendants, and all other persons acting at the direction of or in concert or participation with defendants, are temporarily enjoined from:

1. Picketing the property owned and operated by plaintiff in Duval County, Florida, known as Moncrief Yard.

2. Causing, directing, authorizing, recommending, sanctioning or participating in the patrolling, picketing or

blockading of entrances or exits used by employees of plaintiff in connection with their work or in connection with plaintiff's land, buildings, facilities or other property owned or controlled by plaintiff in Duval County, Florida, known as Moncrief Yard.

3. Causing, directing, recommending, or inducing or attempting to induce the employees of plaintiff who report to work at the property owned and controlled by plaintiff known as Moncrief Yard, to cease performing any of their regularly assigned duties of their employment, including specifically the distribution of literature to plaintiff's employees recommending, causing, directing or inducing plaintiff's employees to cease performing such duties.

4. Interfering in any way with the operation of plaintiff's property located in Duval County, Florida, known as Moncrief Yard.

The defendant labor organizations, their appropriate officers, agents, servants and employees and the other defendants herein are directed and mandatorily enjoined to withdraw and countermand any order, directive, recommendation, request or other advice, heretofore issued by any of defendants' officers, agents or members, asking or inducing any of plaintiff's employees working on plaintiff's property known as Moncrief Yard not to carry out certain of their regularly assigned duties in connection with the operation of said Moncrief Yard by the plaintiff.

This injunction is limited to the picketing and other aforementioned actions of defendants arising out of defendants' existing disputes with the Florida East Coast Railway Company.

This temporary injunction shall become effective upon the filing by plaintiff and acceptance by the Clerk of this

Court of a good and sufficient bond in favor of defendants in the amount of Twenty-Five Thousand ($25,000) Dollars.

DONE AND ORDERED in Chambers at Jacksonville, Duval County, Florida, this 3d day of May, 1967.

/s/ CHARLES A. LUCKIE
Circuit Judge

APPENDIX C

Letter Opinion Denying Motion to Dissolve State Court Injunction and Making Injunction Permanent— June 3, 1969

CHAMBERS OF
CHARLES A. LUCKIE
CIRCUIT JUDGE
COUNTY COURTHOUSE
JACKSONVILLE, FLORIDA 32202

June 3, 1969

Rogers, Towers, Bailey, Jones & Gay, Esquires
1300 Florida Title Building
Jacksonville, Fla. 32202

Attn: David M. Foster

Gentlemen:

Re: Atlantic Coast Line
Railroad Company vs.
B.L.E., etc.

I find it very difficult to reconcile the final conclusion made by the Court in the case of the Brotherhood of Railway Trainmen vs. Jacksonville Terminal Company; and impossible to do so unless the conclusion is confined to the particular case then before that Court. The court concludes its opinion by making the flat statement that, "• • • until Congress acts, picketing—whether primary or secondary—must be deemed conduct protected against state proscription." But it is quite apparent from the remainder of the opinion that the Court did not intend to say that

ALL secondary picketing is "conduct protected against state proscription."

The opinion contains the following statements: "We are presented, then, with the problem of *delineating the area* of labor combat protected against infringement by the States." It further states: "It is difficult to formulate many generalizations governing common situs picketing, but it is clear that secondary employers are not *necessarily* protected against picketing aimed directly at their employees." And, "• • • *to condemn all* of the petitioners' picketing which carries any 'secondary' implications *would be to paint with much too broad a brush.*" Also, "• • • the Railway Labor Act permits employees to engage in SOME forms of self-help, free from state interference, IBID." further, "• • • it cannot categorically be said that ALL picketing carrying 'secondary' implications is prohibited, Part VII, SUPRA." (Emphasis by italics supplied; Court emphasis by Capitalization.)

Therefore, the Court having plainly indicated that SOME forms of secondary picketing may be prohibited by the States, I cannot reconcile the flat statement first quoted in this letter with the remaining statements in the opinion unless I conclude that the flat statement made by the Court related only to the facts before it in that particular case. Consequently, the motion to dissolve the injunction will be denied and, at the request of counsel for the Defendants, the injunction will be made permanent. Please consult Allan Milledge and prepare such Order.

Very truly yours,

/s/ CHARLES A. LUCKIE

CAL:bs

cc: Milledge and Horn, Esquires

APPENDIX D

Order of Federal Court Enjoining State Court Proceedings—June 19, 1969 (Entered June 20, 1969)

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

No. 67-335-Civ-J

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Plaintiff,

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS: LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; *et al.*,

Defendants.

On June 6, 1969, a hearing was held in the above entitled cause upon Defendants' Motion for Preliminary Injunction, filed June 4, 1969, and upon Plaintiff's Notice of Voluntary Dismissal and Motion for Voluntary Dismissal.

It appears that Plaintiff's purported Notice of Voluntary Dismissal is without effect, as Defendants had, prior to Plaintiff's "notice", filed an Answer herein on May 27, 1969. Fed. R. Civ. P., Rule 41(a)(1). Furthermore, Plaintiff has failed to show that the Answer was filed merely to foreclose a voluntary dismissal. See *Kohloff* v. *Ford*

Motor Co., 29 F. Supp. 843 (S.D.N.Y. 1939); *Flaig* v. *Yellow Cab Co.*, 4 F.R.D. 174 (W.D.Mo. 1944).

As the Court is of the opinion that Defendants' Motion for Preliminary Injunction has merit, Plaintiff's Motion for Voluntary Dismissal under Rule 41(a)(2), Fed. R. Civ. P., will be denied.

Defendants seek to have this Court enjoin Plaintiff from availing itself of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, in Case No. 67-3536, Division E. The state court order enjoined the picketing activities of Defendants as against the Plaintiff herein on the ground that the picketing violated state law.

Defendants herein contend that this Court should enter its injunction on the ground that it is necessary in aid of this Court's jurisdiction, and to protect and effectuate the judgment of this Court dated April 26, 1967. 28 U.S.C. § 2283.

Plaintiff argues that *Amalgamated Clothing Workers* v. *Richman Bros.*, 348 U.S. 511 (1955), requires this Court to allow the state proceedings to continue without interference. Plaintiff's reliance is misplaced, however, for in *Richman* the District Court could issue no injunction in aid of its jurisdiction because the District Court had no jurisdiction to aid. There the District Court's jurisdiction was preempted by that of the National Labor Relations Board. In the instant case, however, this Court has jurisdiction (see Order of April 26, 1967, Conclusion of Law No. 1) and may grant injunctive relief in aid thereof.

In its Order of April 26, 1967, this Court found that Plaintiff's Moncrief Yard, the area in question, "is an integral and necessary part of [Florida East Coast Railway Company's] operations." Finding of Fact No. 5. The Court concluded furthermore that Defendants herein "are now

free to engage in self-help." Conclusion of Law No. 3. The injunction of the state court, if allowed to continue in force, would effectively nullify this Court's findings and delineation of rights of the parties. The categorization of Defendants' activities as "secondary" does not alter this state of affairs. See *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, —— U.S. ——, 22 L.Ed. 2d 344 (1969). The prohibition of 28 U.S.C. § 2283, therefore, does not deprive this Court of jurisdiction to enter the injunction in this instance. *Capital Service, Inc.* v. *NLRB*, 347 U.S. 501 (1954); *Brotherhood of Ry. Trainmen* v. *Board of Trustees of Galveston Wharves*, 400 F.2d 320 (5th Cir. 1968).

It is, therefore,

ORDERED:

1. Plaintiff's Motion for Voluntary Dismissal is denied.

2. Plaintiff, Atlantic Coast Line Railroad Company (merged predecessor of Seaboard Coast Line Railroad Company), its agents, servants, employees and attorneys and all persons in active concert and participation with them, are enjoined from giving effect to or availing themselves of the benefits of the Order for Temporary Injunction entered May 3, 1967, in the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida, Case No. 67-3536, Division E, pending the final hearing and determination of this action.

DONE AND ORDERED at Jacksonville, Florida, this 19th day of June, 1969.

/s/ WM. A. MCRAE, JR.
Judge

Copies to counsel

APPENDIX E

Order of Court of Appeals for the Fifth Circuit Denying Stay—July 7, 1969

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*,

Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before BELL, AINSWORTH and GODBOLD, *Circuit Judges.*

By the Court:

IT IS ORDERED that the appellant's application for stay of injunction pending appeal, filed in the above styled and

numbered cause, is hereby DENIED. Brotherhood of Railroad Trainmen, et al., Petitioners, v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

In view of the importance of the case it is provided, however, that a temporary stay of enforcement of the District Court's injunction be hereby granted for a period of 10 days only from the date of issuance of this order, to enable the parties to seek such further relief as they may desire.

APPENDIX F

Opinion of Mr. Justice Black on Grant of Application for Stay—July 16, 1969

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

ATLANTIC COAST LINE RAILROAD CO.,

—v.—

BROTHERHOOD OF LOCOMOTIVE ENGINEERS *et al.*

APPLICATION FOR STAY

[July 16, 1969]

MR. JUSTICE BLACK, *Circuit Justice.*

This is an application presented to me by the railroad to stay enforcement of an injunction issued by the United States District Court for the Middle District of Florida against the enforcement of a state court injunction restraining the union from picketing around the Moncrief Yard in Florida, a classification yard owned by the Seaboard Coast Line, the successor company to the Atlantic Coast Line Railroad. The picketing is being carried on because of a strike against the Florida East Coast Railway by its employees; there is no dispute between the Seaboard Coast Line or the Atlantic Coast Line and their employees. The union wishes to picket the Moncrief Yard, however, because

many of the Florida East Coast cars are switched into it in order to carry on the railroad's business.

At the last Term of this Court we had before us a question involving the picketing of the Jacksonville Terminal Company at Jacksonville, Florida, owned and operated by the Florida East Coast, Seaboard, Atlantic Coast Line, and Southern railroads. There an injunction was granted in the Florida state courts to restrain the union from picketing the entire terminal. This Court in a 4 to 3 opinion decided that the picketing was protected by federal law and therefore could not be enjoined by Florida. *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U. S. 369 (1969). The union here substantially relies on that case, insisting that it has the same federally protected right to picket at the Moncrief Yard that this Court held it could exercise at the Jacksonville Terminal. The district court here enjoined the railroad from utilizing a state court injunction against picketing at Moncrief and refused the railroad's request to stay the effectiveness of its injunction pending appeal. The Court of Appeals, however, did grant an application to suspend the effectiveness of the district court injunction for ten days, which expires tomorrow—July 17th. The question before me is whether I should suspend the effectivenes of that injunction pending a review of the district court's judgment.

Since 1793 a congressional enactment, now found in 28 U. S. C. § 2283, has broadly provided that federal courts cannot, with certain limited exceptions, enjoin state court proceedings. Whether this long-standing policy is violated by the district court's injunction here presents what appears to me to be a close, highly complex and difficult question. Not only does it present a difficult problem but it is

one of widespread importance, the solution of which might broadly affect the economy of the State of Florida, the United States, and interstate commerce. Under these circumstances I do not feel justified in permitting the district court injunction to be enforced, changing the status quo at Moncrief Yard, until this Court can act for itself on the questions that will be presented in the railroad's forthcoming application for certiorari. For this reason an order will be issued staying the enforcement of the district court injunction pending disposition of the petition for certiorari in this Court. To accomplish this result without undue delay it will be the duty of the railroad to expedite all actions necessary to present its petition for certiorari here.

APPENDIX G

Order of Mr. Justice Black Granting Stay Application—July 16, 1969

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1969

Atlantic Coast Line Railroad Company,

Petitioner,

vs.

Brotherhood of Locomotive Engineers, *et al.*

Upon consideration of the application of counsel for the petitioner and of the opposition of the respondents thereto,

It is ordered that the injunction order of the U. S. District Court for the Middle District of Florida of June 19, 1969 be, and the same is hereby, stayed pending the expeditious filing of a petition for a writ of certiorari. Should such a petition be so filed, this stay is to continue pending the action of the Court on such petition. Should the petition for a writ of certiorari be denied, this stay is to expire immediately. In the event the petition for a writ of certiorari is granted, this stay is to remain in effect pending the issuance of the judgment of this Court.

/s/ Hugo L. Black
Associate Justice of the Supreme Court of the United States

Dated this 16 day of July, 1969.

APPENDIX H

Judgment of Court of Appeals Affirming Injunction of District Court—July 17, 1969

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 28064

D. C. Docket No. Civ. 67-335-J.

ATLANTIC COAST LINE RAILROAD COMPANY,

Appellant,

versus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS; LOCAL LODGE DIVISION 823 OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; *et al.,*

Appellees.

Appeal from the United States District Court for the Middle District of Florida

Before BELL, AINSWORTH and GODBOLD, *Circuit Judges.*

The parties in the captioned cause have filed a stipulation for entry of judgment as follows:

"The Court may enter a judgment on the merits of the appeal from the District Court's order dated June 19,

1969, without further briefing or oral argument affirming such order of the District Court, such stipulation by appellant to be without prejudice to appellant's rights to further judicial review. David Foster attorney for appellant. Allan Milledge attorney for appellees."

Pursuant to the foregoing stipulation it is accordingly hereby ordered and adjudged, by this Court, without further briefing or argument that the judgment of the District Court be hereby affirmed, without prejudice to appellant's rights to further judicial review. Brotherhood of Railroad Trainmen, et al., Petitioners v. Jacksonville Terminal Co., 89 S. Ct. 1109 (1969).

APPENDIX I

The Norris-LaGuardia Act

The text of the Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. §§ 101 *et seq.*, is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

"SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and con-

ditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

"SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

"Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

"(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

"(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

"SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

"(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

"(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

"(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

"(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

"SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

"SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

"SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed

and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

"Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall be-

come void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

"The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

"SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

"SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or

growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

"SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certifying as in ordinary cases the record of the case to the court of appeals for its review. Upon the filing of such record in the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character."

[Sections 11 & 12 have been repealed, c. 645, § 21, 62 Stat. 862 (1948)]

"SEC. 13. When used in this Act, and for the purposes of this Act—

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the

same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

"SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

"SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed."